

59-6-101. Definitions.

As used in this chapter:

- (1) "Business entity" means a claimant that is a:
 - (a) C corporation;
 - (b) S corporation;
 - (c) general partnership;
 - (d) limited liability company;
 - (e) limited liability partnership;
 - (f) limited partnership; or
 - (g) business entity similar to Subsections (1)(c) through (f):
 - (i) with respect to which the business entity's income or losses are divided among and passed through to taxpayers; and
 - (ii) as defined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) (a) Except as provided in Subsection (2)(b), "claimant" means a resident or nonresident person.
 - (b) "Claimant" does not include an estate or trust.
- (3) "Estate" means a nonresident estate or a resident estate.
- (4) "Minerals" means:
 - (a) metalliferous minerals as defined in Section 59-2-102;
 - (b) nonmetalliferous minerals as defined in Section 59-2-102; or
 - (c) a combination of Subsections (4)(a) and (b).
- (5) "Producer" means a person that:
 - (a) produces or extracts minerals from deposits in this state; or
 - (b) is the first purchaser of minerals produced or extracted from deposits in this state.
- (6) "Refundable tax credit" or "tax credit" means a tax credit that a claimant, estate, or trust may claim:
 - (a) as provided by statute; and
 - (b) regardless of whether the claimant, estate, or trust has a tax liability:
 - (i) for a tax imposed under:
 - (A) Chapter 7, Corporate Franchise and Income Taxes;
 - (B) Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act; or
 - (C) Chapter 10, Individual Income Tax Act; and
 - (ii) for the taxable year for which the claimant, estate, or trust claims the tax credit.
- (7) "Taxable year" means the taxable year of a claimant, estate, or trust under:
 - (a) Chapter 7, Corporate Franchise and Income Taxes;
 - (b) Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act; or
 - (c) Chapter 10, Individual Income Tax Act.
- (8) "Tax return" means a return required by:
 - (a) Chapter 7, Corporate Franchise and Income Taxes;
 - (b) Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay

Corporate Franchise or Income Tax Act; or

(c) Chapter 10, Individual Income Tax Act.

(9) "Trust" means a nonresident trust or a resident trust.

(10) "Withholding return" means a return a producer is required to file under this chapter.

Amended by Chapter 255, 2008 General Session

59-6-102. Producer's obligation to deduct and withhold payments -- Amount -- Exempt payments -- Credit against tax.

(1) Except as provided in Subsection (2), each producer shall deduct and withhold from each payment being made to any person in respect to production of minerals in this state, but not including that to which the producer is entitled, an amount equal to 5% of the amount which would have otherwise been payable to the person entitled to the payment.

(2) The obligation to deduct and withhold from payments as provided in Subsection (1) does not apply to those payments which are payable to:

(a) the United States, this state, or an agency or political subdivision of the United States or this state;

(b) an organization that is exempt from the taxes imposed by Chapter 7, Corporate Franchise and Income Taxes, in accordance with Subsection 59-7-102(1)(a);

(c) an Indian or Indian tribe if the amounts accruing are subject to the supervision of the United States or an agency of the United States; or

(d) a business entity that files an exemption certificate in accordance with Section 59-6-102.1.

(3) A claimant, estate, or trust that files a tax return with the commission may claim a refundable tax credit against the tax reflected on the tax return for the amount withheld by the producer under Subsection (1).

Amended by Chapter 255, 2008 General Session

59-6-102.1. Exemption certificate -- Penalties -- Limit on filing exemption certificate.

(1) For a taxable year, a business entity may file an exemption certificate claiming an exemption from the deduction and withholding requirements of this chapter if:

(a) for that taxable year, the business entity is required to file a tax return with the commission;

(b) for that taxable year, the business entity expects to claim a refund on a tax return of at least 75% of the amount that would otherwise be required to be deducted and withheld under this chapter; and

(c) regardless of whether the business entity sells or otherwise disposes of the business entity's interest in the production of minerals, the business entity consents to the jurisdiction of the commission to enforce:

(i) an amount required to be deducted and withheld under this chapter; or

- (ii) a penalty imposed under this chapter.
- (2) A business entity filing an exemption certificate in accordance with Subsection (1) shall file the exemption certificate:
 - (a) with the:
 - (i) producer; and
 - (ii) commission; and
 - (b) on a form prescribed by the commission.
- (3) (a) In addition to any other penalty provided by law, a business entity is subject to the penalty described in Subsection (3)(b) if the business entity:
 - (i) files an exemption certificate in accordance with this section; and
 - (ii) does not file a tax return with the commission for the taxable year for which the business entity files the exemption certificate described in Subsection (3)(a)(i).
- (b) For purposes of Subsection (3)(a), the penalty is 100% of the amount that the producer would have deducted and withheld under this chapter for the taxable year had the business entity not filed an exemption certificate under this section for that taxable year.
- (c) The commission shall collect the penalty described in Subsection (3)(b).
- (4) If a business entity is subject to the penalty described in Subsection (3), the business entity may not file an exemption certificate under this section for five taxable years beginning with the taxable year that the business entity is subject to the penalty described in Subsection (3).
- (5) In addition to any other penalty provided by law, a business entity is subject to a penalty of 5% of the amount that a producer would otherwise be required to deduct and withhold under this chapter for the taxable year if:
 - (a) the business entity files an exemption certificate under this section for a taxable year; and
 - (b) had the business entity not filed the exemption certificate under this section for the taxable year, the business entity:
 - (i) would have been allowed to claim a refund on a tax return for the taxable year in an amount less than 75% of the amount required to be deducted and withheld under this chapter for the taxable year; or
 - (ii) would not have been allowed to claim a refundable tax credit under Section 59-6-102 for the taxable year.

Enacted by Chapter 255, 2008 General Session

59-6-103. Returns and payments required of producers.

- (1) (a) Subject to Subsection (1)(b), a producer required to deduct and withhold an amount under this chapter shall file a withholding return with the commission:
 - (i) for the amounts required to be deducted and withheld under this chapter during the preceding calendar quarter; and
 - (ii) on a form prescribed by the commission.
- (b) A withholding return described in Subsection (1)(a) is due on or before the last day of April, July, October, and January.
- (c) A withholding return described in Subsection (1)(a) shall contain:

(i) the name and address of each person receiving a payment subject to the deduction and withholding requirements of this chapter for the calendar quarter for which the withholding return is filed;

(ii) for each person described in Subsection (1)(c)(i), the amount of payment the person would have received from the production of minerals:

(A) by the producer had the deduction and withholding required by this chapter not been made; and

(B) for the calendar quarter for which the withholding return is filed;

(iii) for each person described in Subsection (1)(c)(i), the amount of deduction and withholding under this chapter for the calendar quarter for which the withholding return is filed;

(iv) the name or description of the property from which the production of minerals occurs that results in a payment subject to deduction and withholding under this chapter; and

(v) for each person described in Subsection (1)(c)(i), the interest of the person in the production of minerals that results in a payment subject to deduction and withholding under this chapter.

(2) (a) If a producer receives an exemption certificate filed in accordance with Section 59-6-102.1 from a business entity, the producer shall file a withholding return with the commission:

(i) on a form prescribed by the commission; and

(ii) on or before the January 31 following the last day of the taxable year for which the producer receives the exemption certificate from the business entity.

(b) The withholding return required by Subsection (2)(a) shall contain:

(i) the name and address of the business entity that files the exemption certificate in accordance with Section 59-6-102.1;

(ii) the amount of the payment made by the producer to the business entity that would have been subject to deduction and withholding under this chapter had the business entity not filed the exemption certificate in accordance with Section 59-6-102.1;

(iii) the name or description of the property from which the production of minerals occurs that would have resulted in a payment subject to deduction and withholding under this chapter had the business entity not filed the exemption certificate in accordance with Section 59-6-102.1; and

(iv) the interest of the business entity in the production of minerals that would have resulted in a payment subject to deduction and withholding under this chapter had the business entity not filed the exemption certificate in accordance with Section 59-6-102.1.

Amended by Chapter 255, 2008 General Session

59-6-104. Commission administration of chapter -- Rulemaking authority.

(1) To the extent the following are consistent with this chapter, the commission shall administer this chapter in accordance with:

(a) Chapter 1, General Taxation Policies; and

(b) Chapter 10, Part 4, Withholding of Tax.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules necessary to effectuate the purposes of this chapter.

Amended by Chapter 212, 2009 General Session